

FILED
Court of Appeals
Division II
State of Washington
11/15/2018 11:55 AM

No. 52455-4-II

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

SUPERIOR COURT OF CLARK COUNTY

No. 95-3-01675-5

GLENN A JUNE BRINKER
Petitioner

v.

JOHN PAUL BRINKER
Respondent/ Appellant

OPENING BRIEF OF APPELLANT

Glenna June Brinker, Pro Se
1775 Ne 108th Avenue
Portland, OR 97220

John Paul Brinker, Pro Se
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Vancouver, WA 98685

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5	In McDonald v. Santa Fe Trail Transportation Co., 427 U.S. 273	
6	(1976).....	,9,10
7	United States Statutes	
8	Section 8346(a)of tittle 5 United States Code	11
9	(a)The money mentioned by this subchapter is not assignable, either in	
10	law or equity, except under the provisions of subsections (h) and (j)	
11	of section 8345 of this title, or subject to execution, levy, attachment,	
12	garnishment, or other legal process, except as otherwise may be provided	
13	by Federal laws.	
14		
15	29 U.S.C. § 1003(b)(1)	5
16	b)Exceptions for certain plans The provisions of this subchapter shall	
17	not apply to any employee benefit plan if—	
18	(1) such plan is a governmental plan (as defined in section 1002(32)	
19	of this title);	

BRIEF OF JOHN PAUL BRINKER
ASSIGNMENT OF ERROR

1. The trial court erred in not accepting John Brinker's determination as to when the loan repayment period should end.
2. The trial court erred in calculating the amount owed.
3. The trial court erred in that the judge did not properly understand the law involved. Consequently, the trial court's findings of fact are not supported by substantial evidence.
4. The trial court erroneously determined that Glenna Brinker's monthly retirement pay was \$500 instead of \$697.00
5. The trail court erred when it was unduly influence by Glenna Brinker's physical handicap.
6. The trial court erred in 2008 when it raised Glenna Brinker's pension to 30.96%, but would not drop John Brinker's survivor benefit of \$221.50 or an additional 5.2%.

7. The trial court erred when it did not follow Section 8346(a) of title 5 United States Code.

8. The trial court performed only a cursory review of John Brinker's brief of May 15, 2018. This led to his summary dismissal of John Brinker's appeal.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

ERROR 1: In the United States, we have an adversarial judicial system.

The role of the judge is to determine, which party made the best case and decide between them. Except in very limited cases, it is not to advocate for one party or the other. In civil cases, the moving party has the burden of proof to establish that he has fulfilled his duty under the court order.

John Brinker has met this burden. John Brinker determined that the date the repayment started was April 27, 2012. He also determined the amount owed and the date the payments would be completed. Glenna Brinker had the burden of coming forward. Glenna Brinker did not and has not established her gross monthly payment from OPM prior to April 27, 2012.

Consequently, she did not establish her monthly deficit. Glenna Brinker could have done so with the following evidence: her bank statement for

1 the month before her pension payments increased, She did not present her
2 Tax Return the year 2011 or 2012 with the accompanying 1099Rs.¹ She
3 simply alleged that she did not trust John Brinker's figures. Even an
4 accountant could not figure out Glenna Brinker's deficit without the
5 previously mentioned evidence. Question: Did she not trust John
6 Brinker's numbers; Or had she done her own calculations and come up
7 with numbers that were equal to or higher than John Brinker's, deciding to
8 prolong her receipt of the extra \$500 a month as long as possible? In
9 ignoring, the accepted standards for burden of proof Commissioner Snider
10 made a serious judicial error.

11 **ERROR 2:** Commissioner Snider also made an error in calculating the
12 amount owed. In her decision of May 7, 2018, she made the following
13 statement:

14 "Glenna Brinker received a benefit of \$500 (\$300 to her and \$200 to the
15 survivor benefit)"

16 page 2 line 9

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18

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1 OPM equivalent of a W-2.

1 In the June 17, 2011, Domestic Relations Order, the Court held page 2

2 Line 12:

3 To allow Glenna Brinker to recoup benefits already paid to
4 John Brinker that should have been paid to Glenna Brinker
5 under the February 8 2011 Order, the prospective payments
6 of Glenna Brinker's 30.96% share of John Brinker's total
7 and undivided monthly self only annuity shall be increased
8 by an additional \$500 per month for an unspecified number
9 of months.

10
11 As can be seen Glenna Brinker never received a benefit of \$500 prior to
12 April 27,2012. The \$500 is a repayment of a debt. It did not start until
13 April 27,2012, so it cannot be used to determine her net deficit..The \$500
14 is an arbitrary amount, The court could have ordered a repayment of \$400
15 or \$600 or even \$1000. Accordingly, it is determined that Commissioner
16 Snider made a grave legal error in using \$500 amount. Commissioner
17 Snider also erred in using \$200 figure for the survivor's benefit. In her
18 Exhibit A, OPM uses the term

19

1 "Apportionment Payment" and the figure is \$221.50. The \$200 figure is
2 what the survivor's benefit cost in 2007.

3 **ERROR 3:**In the transcript of the May 2, 2018, hearing page 10.

4 Commissioner Snider made the following remarks:

5 THE COURT: pursuant to ERISA?

6 MS. Brinker What's ERISA?

7 THE COURT: It's an Employment Division allowance that
8 the federal government will recognize state orders. It
9 elevates our state orders to a federal level in order to be
10 able to divide pensions.

11 Mr. Brinker: I don't know if they follow ERISA.

12 THE COURT: They have to, yeah. They have to.

13 Under 29 U.S.C. § 1003(b)(1), the provisions of ERISA shall not apply to
14 any employee benefit plan if such plan is a governmental plan.

15 Accordingly, it must be determined, that Commissioner Snider's findings
16 of fact are not supported by substantial evidence. Commissioner Snider's
17 decision must be overturned.

18 5

1 **ERROR 4:** In the transcript of the May 2, 2018, hearing page 36 line 6.

2 Commissioner Snider made the following statement:

3 THE COURT: When I was an attorney for 17 years
4 practicing domestic relations, I did not do QDROs. This is
5 one of the reasons why. They're very unclear and they can
6 cause a lot of pitfalls for people.

8 In view of the above, it must be determined that Commissioner Snider
9 was unqualified to hear this case. The burden of proof is on Glenna to
10 establish her monthly payments prior to April 27, 2012. She has failed to
11 do so. Commissioner Snider erred when she attempted to establish
12 Glenna's monthly payment prior April 27, 2012. Glenna did not challenge
13 John Brinker's mathematics with an alternate set of figures. She did not
14 present an accountant's report disputing John Brinker's figures. From the
15 evidence available, we can determine what Glenna's income was on
16 March 31, 2012. Presented with John Brinker's initial request for
17 termination of payments were copies of his checking account statements
18 for March 2012 and April 2012. OPM pays John Brinker a few days early
19 each month, so the April 27, 2012 payment was for the month of May.
20 This should bring John Brinker's checking account statement in
21 accordance with Commissioner Snider's Exhibit A.

1 John Brinker's net retirement payment on March 29, 2012 was 2,910.06

2 John Brinker's net retirement payment on April 27, 2012 was 1,657.63

3 Making a difference of 1,252.43

4 According to Commissioner Snider's Exhibit A, Glenna had an income of

5 \$1949.23 on April 27, 2012.

6 When we subtract \$1252.43 from 1949.43.

7 It makes Glenna's monthly payment prior to April 27, 2012 to be \$697.00²

8 Glenna' court ordered payment was \$1,312.00 a month.

9 When we subtract 697.00

10 It makes Glenna' net deficit to be \$615.00

11 Multiply by 51 months

12 Total owed to Glenna \$31,365.00

13 In conclusion, Commissioner Snider erred in assigning John Brinker a

14 debt of \$41,412 instead of \$31,365. She did this because Glenna is

15 handicapped with Cerebral Palsy. Glenna is not mentally impaired. She

16 has a Bachelor's Degree in Sociology and a Masters Degree in Library

17 Science. Look at the Rebuttal Briefs, she wrote, they are not the work of a

18 mentally impaired person. John Brinker has only a Bachelor's Degree. In

19 7

2 Glenna net payment may be lower because of deductions such as taxes and survivor benefit.

1 the February 8, 2011 Order, the court determined that Glenna Brinker was
2 entitled to 30.96% of John Brinker's monthly self-only annuity paid on
3 and after January 1, 2008, minus 50% of the former spouse
4 survivor annuity premiums.

5 (emphasis added)

6 50% survivor annuity premiums is $221.50 = 110.75 + 500 = 610.75$
7 divided into $\$31,365 = 51.35$ months as period of payment.(See Page 2
8 line 12 June 17, 2011 of the Domestic Relations Order) Accordingly,
9 John Brinker's period of repayment should have ended on August of 2016.

10 John Brinker met his burden of coming forward. Glenna Brinker did not.

11 **ERROR 5:** Commissioner Snider should have ruled in John Brinker's
12 favor according to the accepted rules of jurisprudence. She failed to do
13 so. Instead, she allowed herself to be unduly influence by Glenna
14 Brinker's physical handicap. She took society's discrimination against the
15 handicapped and placed it squarely on the shoulders of John Brinker. This
16 is unfair. This is clearly a case of reverse discrimination, which is
17 forbidden by RCW 49.60.010. Commissioner Snider increased John
18 Brinker's debt by \$10,047 ($41,412 - 31,365 = 10,047$) because Glenna

19 8

1 Brinker is physically handicapped. In McDonald v. SANTA FE TRAIL
2 TRANSPORTATION CO., (1976) the Supreme Court held that:

3 **United States Supreme Court**
4 **McDONALD v. SANTA FE TRAIL**
5 **TRANSP. CO., (1976)**
6 **No. 75-260**

7 Title VII of the Civil Rights Act of 1964 prohibits the discharge
8 of "any individual" because of "such individual's race," 703 (a)
9 (1), 42 U.S.C. 2000e-2 (a) (1). 5 Its terms are not limited to
10 discrimination [427 U.S. 273, 279] against members of any
11 particular race. Thus, although we were not there confronted
12 with racial discrimination against whites, we described the Act
13 in Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971), as
14 prohibiting "[d]iscriminatory preference for any [racial] group,
15 minority or majority" (emphasis added). 6 Similarly the EEOC,
16 whose interpretations are entitled to great deference, id., at 433-
17 434, has consistently interpreted Title VII to proscribe racial
18 discrimination in private employment against whites on the
19 same terms as racial discrimination against nonwhites, holding
20 that to proceed otherwise would "constitute a derogation of the
21 Commission's Congressional [427 U.S. 273, 280] mandate to
22 eliminate all practices which operate to disadvantage the
23 employment opportunities of any group protected by Title VII,
24 including Caucasians." EEOC Decision No. 74-31, 7 FEP 1326,
25 1328, CCH EEOC Decisions § 6404, p. 4084
26 (1973). 7

27

28 This conclusion is in accord with uncontradicted legislative
29 history to the effect that Title VII was intended to "cover white
30 men and white women and all Americans," 110 Cong. Rec.
31 2578 (1964) (remarks of Rep. Celler), and create an "obligation

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1 not to discriminate against whites," id., at 7218 (memorandum
2 of Sen. Clark). See also id., at 7213 (memorandum of Sens.
3 Clark and Case); id., at 8912 (remarks of Sen. Williams). We
4 therefore hold today that Title VII prohibits racial discrimination
5 against the white petitioners in this case upon the same
6 standards as would be applicable were they Negroes and
7 Jackson white. 8 [427 U.S. 273, 281] Respondents contend that,
8 even though generally applicable to white persons, Title VII
9 affords petitioners no protection in this case, because their
10 dismissal was based upon their commission of a serious
11 criminal offense against their employer. We think this argument
12 is foreclosed by our decision in McDonnell Douglas Corp. v.
13 Green, 411 U.S. 792 (1973).

14
15 It is my contention that while McDonald v. SANTA FE TRAIL

16 TRANSPORTATION CO dealt with racial discrimination, it is still

17 controlling in cases concerning physical handicaps.

18 **ERROR 6:** It was my contention, that the trial court in 2008 also erred

19 when he made John pay for half of her survivor benefit. In effect the

20 court ordered John to pay 30.96% plus \$221.50 in the year 2012. \$221.50

21 is 5.2% of my pension for a total of 35.98% . To add insult to injury, John

22 has to pay taxes on the \$221.50 and he has pay more taxes then Glenna

23 does. It is pointed out that the record in this case does not support giving

24 Glenna an extra 5.2%. Apparently, it is the way things are done in Clark

25 County. I would like to point out that no precedents were cited to support

1 this contention. I feel that the Judge improperly awarded her an extra
2 5.2% share of the pension because of her physical handicap. In order to
3 make up for this unequal distribution of assets, the Court should make one
4 of two the following provisions:

5 End John's payment of the survivor annuity or John be allowed to deduct
6 his portion of survivor's annuity payment as alimony.

7 **ERROR 7:** Also, under Section 8346(a) of title 5 United States Code, a
8 civil service pension is not assignable either in law or equity. Therefore
9 the \$500 payment should be terminated immediately.

10 **ERROR 8:** In regards to Judge Vanderwood's decision, during the trial
11 he asked if the payments were scheduled to end soon? Apparently, as a
12 lawyer, who charged several hundred dollars an hour in private practice,
13 \$500 a month is not much money nor is \$10,047. Given a correct Court
14 Order, John Brinker can recover the over payment to Glenna Brinker.
15 Something Judge Vanderwood may have been unaware. In view of the
16 above, Judge Vanderwood performed only a cursory review of my brief of
17 May 15, 2018. This led to his summary dismissal of John Brinker's
18 appeal.

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1 RELATIONS ORDER ("the February 8, 2011 Order").CP3 The court
2 found that the May 8, 1998 DRO caused the OPM to pay Glenna Brinker
3 a smaller share of John Brinker's monthly self-only annuity than
4 intended in the Decree. CP5 The court is required to enter this Order to
5 effectuate a prospective change in the amount of the self-only annuity
6 that the OPM pays to Glenna Brinker.CP 6-7 Glenna Brinker is entitled
7 to 30.96% of John Brinker's total and undivided self-only annuity as
8 more particularly described below. CP 8 That is the percentage amount
9 specified in an OPM letter dated September 10, 2007 to Glenna
10 Brinker.CPP 9 In the February 8, 2011 Order, the court determined that
11 Glenna Brinker was entitled to 30.96% of John Brinker's monthly self-
12 only annuity paid on and after January 2008, minus 50% of the former
13 spouse survivor annuity premiums. CP 10-12 To allow Glenna Brinker
14 to recoup benefits already paid to John Brinker that should have been
15 paid to Glenna Brinkerunder the February 8, 2011 Order, the prospective
16 payments of Glenna Brinker's 30.96% share of John Brinker's total and
17 undivided monthly self-only annuity shall be

1 increased by an additional \$500 per month for an unspecified number of
2 months. CP 13-16 After the OPM implements this Order and issues its
3 first payment of the 30.96% share to Glenna Brinker (plus the additional
4 \$500 per month), John Brinker will obtain an accounting from the OPM.
5 CP 17-18 That accounting will show all amounts of self-only annuity
6 paid to and the amounts of former spouse survivor annuity premiums
7 subtracted from the annuity payments to Glenna Brinker and John
8 Brinker and the dates of such payments to that point.CP19-21 The court
9 will then determine the amount of underpayment to Glenna Brinker and
10 divide that dollar amount by 500.CP 22- The result of that calculation
11 will equal the number of months for which the additional \$500 per
12 month shall be paid in accordance with the court's findings in the
13 February 8, 2011 Order.CP 23-24 The court will then enter an Order
14 specifying the date at which the additional \$500 per month will end.CP
15 25 That Order will then be sent to the OPM for implementation. CP
16 page 3 line 1

17 On December 6, 2017, OPM sent a letter declining to give an opinion.

1 Accordingly, John Brinker filed for a new hearing. On May 7, 2018,
2 Commissioner Snider rendered a decision. CP order of 5/7/18 On
3 June 8, 2018, a hearing was held on a motion to revise Commissioner
4 Snider's decision. That motion was summarily denied on
5 July 5, 2018. CP order of 7/5/18

6 **ARGUMENT**

7 John Paul Brinker has already presented arguments in **ISSUES**
8 **PERTAINING TO ASSIGNMENT OF ERROR**. There is no point
9 in repeating those arguments here. To do so, would only waste the
10 courts time.

11 **CONCLUSION**

12 John Brinker was the victim of reverse discrimination, both for lack of
13 handicap and as a male. Glenna failed to meet her burden of coming
14 forward. Commissioner Snider erred in failing to follow accepted rules of
15 jurisprudence. In the 2011 hearing, the court determined that Glenna
16 Brinker get credit for the ten years after the divorce that I continued to
17 work and determined that I should pay back the perceived overage,
18 because to do otherwise would cast her into poverty. Despite the fact that

1 Glenna was never diagnosed as being disabled. She was handicapped, but
2 she was able to earn a bachelor and master degree. Consequently, I
3 believe Glenna Brinker was not bared from all "substantial gainful
4 activity." She simply preferred to live off alimony, child support and the
5 property settlement. Rather than work for a living.

6 After April 27, 2012, Glenna Brinker's pension was divided into three
7 parts:

8
9 her pension prior to April 27, 2012 \$697
10
11 the court ordered increase of \$615
12
13 the court ordered repayment of \$500
14

15 The court order repayment of \$500 was a completely arbitrary number.

16 This brings into question Commissioner Snider's legal qualifications.

17 Since the appellant is not a lawyer, Judge Vanderwood did not pay

18 16

1 adequate attention to his brief and was unduly influenced by Glenna |
2 Brinker's physical handicap. **Accordingly, the \$500 payment**
3 **should be ended August of 2016.**

4

5 Date November 15, 2018

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Respectfully submitted,

7

John Paul Brinker  Verified by PDFfiller
11/15/2018

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John Brinker. Pro Se

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Moving Party

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APPENDIX

The key problem in this case is determining: What was Glenna Brinker's net monthly income before April 27, 2012? According to OPM 's “ Notice of Annuity Adjustment” Commissioner Snider's Exhibit “A”

Glenna Brinker's income after April 27, 2012 was \$1,949.23.
John Brinker's income decreased after April 27, 2012 by \$1,252.43.
Glenna Brinker's income prior to April 27, 2012 was \$697.00.
According to the Court, Glenna's income should have been \$1,312.00.
Glenna Brinker's income prior to April 27, 2012 was \$697.00.

Glenna's net deficit was \$615,00.

Multiply by 51 months

\$31,365

divided by 610.75

51.35 months after May 1,2012 or

August 2016

COURT OF APPEALS DIVISION II
OF THE STATE OF WASHINGTON

In re the Marriage of:

No. 52455-4-II

GLENNA JUNE BRINKER,

Declaration of Mailing
(DCLM)

Petitioner,

Vs.

JOHN PAUL BRINKER,

Appellant

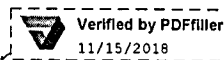
I, JOHN PAUL BRINKER, declare that I am at least 18 years old and a party to this action and: On November 15, 2018, I desposited into the U.S. Mail, first class postage prepaid , a copy of the following document:

Appellant Brief

I certify (or declare) under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Singed at Vancouver, Washington on November 15, 2018

John Paul Brinker
John Paul Brinker



Declaration of Mailing

52455-4-II

1950

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Transmittal Information

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